

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

| | | |
|-----------------------------|---|---------------------------|
| Geoffrey Asher, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs., |) | CIVIL ACTION |
| |) | FILE NO. 2:08-CV-0035-WCO |
| Mark McClure & Ryan Miller, |) | |
| |) | |
| Defendants. |) | |

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS

COMES NOW Geoffrey Asher, Plaintiff, and pursuant to Fed. R. Civ. P. 54(d)(1) and (2), LR 54.1, LR 54.2 and 42 U.S.C. 1988, hereby moves this Honorable Court order costs and attorney's fees as provided by law, to Plaintiff, as the prevailing party at jury trial.

As grounds therefore, Plaintiff states as follows:

POSTURE OF THE CASE

This matter was filed on February 19, 2008. It was brought and adjudicated under 42 U.S.C. 1983, for violations of plaintiff's rights under the Fourth

Amendment of the United States Constitution. At defendants' request, the matter was stayed pending the resolution of a separate state criminal proceeding, from July 16, 2008 until April 17, 2009, at which time the stay was lifted, the state criminal case against plaintiff having been dismissed. The discovery process was subsequently completed, and summary judgment litigation took place both at the trial court level, and with the Eleventh Circuit Court of Appeals.

Jury trial in the matter began August 1, 2011 and concluded on August 4, 2011. The jury returned a verdict in favor of plaintiff against defendant McClure in the amount of \$33,000.00, and in favor of plaintiff against defendant Miller in the amount of \$25,000.00. On this same date, the Court directed the Clerk to enter judgment against defendants on the verdict. On August 8, 2011, judgment on the jury verdicts was filed with the United States District Court, Northern District of Georgia, Gainesville Division. (see Exhibit A – "Judgment on Jury Verdict").

COSTS: FED. R. CIV. P. 54(d)(1) & LR 54.1

Costs, other than attorney's fees, should be allowed to the prevailing party.

Fed. R. Civ. P. 54(d)(1).

Plaintiff incurred, as of the date of this pleading, the following costs in connection with the prosecution of this matter:

| <u>DATE</u> | <u>NATURE OF COST</u> | <u>PAYEE</u> | <u>AMOUNT</u> |
|--------------------|---|---------------------|----------------------|
| 6-11-07: | Open Records for prior 1983 litigation involving LCSO; | Lumpkin Cnty. | \$44.00 |
| 6-14-07: | Open Records for reports etc. for this incident; | Lumpkin Cnty. | \$93.75 |
| 8-23-07: | Open Records for warrants LCSO took on client; | Lumpkin Cnty. | \$14.00 |
| 2-14-08: | Filing fee, U.S. District Court, NDGA, filing complaint; | USDC Clerk | \$350.00 |
| 3-3-08: | Open Records for P.O.S.T. dossiers on defendants; | GA POST Council | \$10.15 |
| 10-9-08: | Open Records for updated P.O.S.T. on defendant Nix; | GA POST Council | \$1.42 |
| 3-9-09: | Duplication of criminal discovery materials, transcripts; | Lumpkin Cnty; | \$51.15 |
| 3-9-09: | Open Records for Lumpkin Grand Jury report ref: LCSO; | Lumpkin Cnty. | \$5.00 |
| 3-9-09: | Court reporter & transcript, McClure deposition; | TDL Court Rpt. INC. | \$503.10 |
| 12-7-09: | Transcript, Asher deposition; | Speedy Rptg., INC. | \$462.15 |
| 5-21-10: | Transcript, W. Grindle deposition; | Thompson Rptg. INC. | \$201.30 |
| 1-24-11: | Copying/Binding services, Appellee 11 th Cir. Brief; | Fed. Express | \$206.85 |
| 1-24-11: | Shipping brief, defendants' appeal to 11 th Circuit; | Fed. Express | \$6.72 |
| 1-24-11: | Shipping brief, defendants' appeal to 11 th Circuit; | Fed. Express | \$6.93 |
| 1-24-11: | Shipping brief, defendants' appeal to 11 th Circuit; | Fed. Express | \$10.14 |
| 7-20-11: | FRCP witness subpoena fee & mileage; | Ryan Miller | \$386.80 |
| 7-20-11: | FRCP witness subpoena fee & mileage; | Ben Nix | \$61.73 |
| 7-20-11: | FRCP witness subpoena fee & mileage; | Mark McClure | \$61.73 |
| 7-20-11: | FRCP witness subpoena fee & mileage; | Curt Donaldson | \$61.73 |
| 7-20-11: | FRCP witness subpoena fee & mileage; | Sterling Cole | \$61.73 |
| 7-22-11: | FRCP witness mileage; | Ryan Miller | \$13.26 |
| 7-26-11: | FRCP witness subpoena fee & mileage; | Kyle Carroll | \$55.30 |
| 7-26-11: | FRCP witness subpoena fee & mileage; | Jennifer Green | \$82.84 |
| 7-26-11: | FRCP witness subpoena fee & mileage; | Grover Bagley | \$59.48 |

| | | |
|--|-----------------------|----------|
| 7-26-11: FRCP witness subpoena fee & mileage | Donald Grindle | \$55.30 |
| 7-26-11: FRCP witness subpoena fee & mileage | Jason Stover | \$65.60 |
| 8-4-11: Transcript fee, R. Miller testimony | D. Bull, CCR | \$106.00 |
| 8-4-11: Mileage (0.51 per mile @200.9 miles), Service; | Dallas Cox | \$102.46 |
| 8-8-11: Court rpt & transcript, W. Grindle deposition; | Ann Evans, CCR | \$277.25 |
| 8-9-11: Video of Hester trial deposition; | Legal Video Srvs. INC | \$50.00 |

TOTAL COSTS TO-DATE: \$3,467.87

Having obtained a favorable judgment through jury verdict, as the prevailing party, plaintiff is entitled to payment of costs by the defendants in the amount of \$3,467.87 as of today's date.

ATTORNEY'S FEES: 42 U.S.C. 1988, FED. R. CIV. P. 54(d)(2) & LR 54.2

This case arose from the defendants' violation of plaintiff's rights guaranteed by the Fourth Amendment to the U.S. Constitution, and the action was brought and prosecuted under 42 U.S.C. 1983. Pursuant to 42 U.S.C. 1988(b), the prevailing party in such an action may be awarded reasonable attorney's fees. This statute was enacted to ensure that federal rights are adequately enforced, by providing attorneys an incentive to take on a civil rights case, even where the amount of damage is not large or the client is of limited means. See, Perdue v. Kenny A., 130 S. Ct. 1662 (2010).

Plaintiff obtained jury verdicts against defendants that not only constitute a judicial pronouncement that his constitutional rights were violated, but also

awarded him \$8,000.00 in compensatory damages, and \$45,000.00 in punitive damages based on the jury's factual finding that the defendants' constitutional deprivations were perpetrated with malice or reckless indifference. As such, plaintiff is the prevailing party, and is entitled to reasonable attorney's fees under 42 U.S.C. 1988(b). A copy of the judgment in this matter is attached hereto as Exhibit A, "Judgment on Jury Verdict".

Estimated Amount of Attorney's Fees Requested

Plaintiff's counsel is preparing a detailed specification and itemization of the requested attorney's fees pursuant to LR 54.2, and is obtaining accompanying affidavits for purposes of a "lodestar" analysis regarding what fees are reasonable. Pending that analysis, plaintiff estimates the approximate amount of attorney's fees in this matter to be \$50,000.00.

WHEREFORE, plaintiff hereby moves this Honorable Court order payment of costs and attorney's fees as provided by law.

/s/ Matt Karzen

Ga. Bar No. 408453, Attorney for Plaintiff

Matt Karzen, LLC

320 E. Clayton St. Suite 502, Athens, GA 30601

Telephone: 706-208-0663

Email: karzenlaw@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2011, I electronically filed Plaintiff's Motion for Attorney's Fees and Costs with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Jason Waymire

Terry Williams

/s/ Matt Karzen

Ga. Bar No. 408453, Attorney for Plaintiff

Matt Karzen, LLC

320 E. Clayton St. Suite 502, Athens, GA 30601

Telephone: 706-208-0663

Email: karzenlaw@gmail.com

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

GEOFFREY ASHER

Plaintiffs,

vs.

MARK MCCLURE
RYAN MILLER

Defendants.

CIVIL ACTION FILE

NO. 2:08-cv-00035-WCO

JUDGMENT ON JURY VERDICT

This action came on for trial before the Court, and a jury, Honorable William C. O'Kelley, Senior United States District Judge presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that judgment is hereby entered in favor of the plaintiff, Geoffrey Asher, and against the defendants, Mark McClure and Ryan Miller, in the amount of Thirty-Three Thousand Dollars (\$33,000.00) as to defendant Mark McClure and Twenty-Five Thousand Dollars (\$25,000.00) as to defendant Ryan Miller, with interest at the rate 0.21 per annum as provided by law.

JAMES N. HATTEN
CLERK OF COURT

By: s/Don Stanhope
Deputy Clerk

Prepared, filed, and entered
in the Clerk's Office
August 8, 2011
James N. Hatten
Clerk of Court

By s/Don Stanhope
Deputy Clerk